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ABSTRACT

The concept of "tenure," with all its clumsy and confusing burden of historic and current misinterpretation, will probably soon disappear. However, what tenure laws intended, and have failed to do, will almost surely be preserved in other forms of administrative procedure. To be effective, administrative procedures must be (1) clear and detailed, (2) set forth in written personnel policies, (3) validated by sound administrative and evaluative practices, (4) ratified in negotiated agreements, and (5) fully consistent with just constitutional requirements. The search for such imaginative and realistic alternatives to statutory teacher tenure will involve long and detailed planning, intensive preparation, marked alteration of slipshod administrative practices, and a real commitment on the part of teachers, administrators, the public, and legislative bodies. A 29-item selected bibliography is provided. (Author)

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TEACHER TENURE *Ain't* THE PROBLEM

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ACKNOWLEDGMENTS

This is indeed a timely report, coming at a point in history when seemingly everything is being reexamined. *Teacher Tenure Ain't the Problem* realistically comes to grips with the emotionally-laden issue of teacher tenure. While the American Association of School Administrators assumes full responsibility for any errors of fact or interpretation, it gratefully thanks Kenneth Hansen, professor of education, Washington State University, Pullman, and William J. Ellena, deputy executive secretary, AASA, Arlington, Virginia, who gave generously of their time and energy in its preparation.

FOREWORD

Until recently it was considered inappropriate to question the wisdom of tenure for teachers. Within the profession, tenure—guaranteeing that teachers cannot be fired except for cause, and only after due process has been accorded—was widely regarded as a bulwark of academic freedom. Even non-educators agreed that teachers needed protection from arbitrary dismissal for invalid reasons.

These attitudes are changing. There is a trend across the nation to abolish or at least modify tenure laws even though more than forty states have such statutes. Many argue that the conditions necessitating the establishment of tenure laws no longer exist. Still others say that tenure laws in many states have become a shelter for incompetent teachers and administrators, poor evaluation procedures, or both.

It is time for AASA, and the profession as a whole, to face the fact that extant conditions within the profession are not in the best interests of education. At the same time, the Association must recognize that competent educators must be protected by written personnel policies from unfair employment practices.

A careful perusal of the tenure statutes coupled with years of firing-line experience leads me to several conclusions. For example:

1. There are many misconceptions about what tenure is and what it does for the employee.

2. Industry provides us with viable alternatives to statutory tenure. At a time when boards of education are thinking about replacing statutory tenure with employment contracts, industry is moving toward replacing the employment contract with agreements concerning termination allowances.
3. There is a significant trend to abolish or at least modify extant tenure laws. Most administrators prefer to see tenure reformed rather than abolished.
4. Competent educators must be protected by written personnel policies. It should not be easy to terminate an employee.
5. The courts clearly uphold a board's right to dismiss staff for good or just cause.
6. Boards must not act on grounds that are violative of the Constitution. Due process must be provided.
7. Tenure laws become a haven for incompetence only when coupled with poor management by school administrators. If personnel evaluation is to be made more meaningful, if documentation is to be comprehensive, and if due process is to be accorded, then the role of administration—particularly at the building level—must change. Further, more administrators—not fewer—will be needed to perform this all-important task.

Teacher Tenure Ain't the Problem is a thoughtful analysis written in a forthright manner. It should be read carefully by every member of AASA. It should be discussed and debated with your colleagues. Then each of us should ask, "In my district, are teachers protected more by incompetent or inadequate management than by tenure laws?"

Paul B. Salmon
Executive Secretary, AASA

Reasonable Job Security

Affording teachers some statutory guarantee of reasonable job security seems a decent enough aim for a free society which depends for much of its strength on a free and open education system. So long as a teacher doesn't voluntarily do something demonstrably culpable, shouldn't he be assured that his job is not in constant jeopardy from arbitrary and malicious pressures? Tenure laws seem to provide an obvious answer to this question; more than 40 states have such statutes, and many of the other states have some optional or restricted application of the tenure principle embodied into law. Some states attempt to achieve the same ends by requiring school boards to issue continuing contracts which must be honored unless certain specific conditions prevail; elsewhere, other kinds of annual or long-term contracts effectively grant long-term tenure to teachers beyond the probationary period.

TABLE I [1]

TYPE OF STATE TENURE OR CONTRACT PROVISIONS IN EFFECT

1. STATES WITH TENURE LAWS

Statewide without exception

Alabama	Iowa	New Mexico
Alaska	Kentucky	North Carolina
Arizona	Louisiana	North Dakota
Arkansas	Maine	Ohio
Colorado	Maryland	Oklahoma
Connecticut [a]	Massachusetts	Pennsylvania
Delaware	Michigan	Rhode Island
District of Columbia	Minnesota	South Dakota
Florida [b]	Missouri	Tennessee
Hawaii	Montana	Virginia
Idaho	Nevada	Washington
Illinois	New Hampshire	West Virginia
Indiana	New Jersey	Wyoming

TABLE I[1] (continued)

Less than statewide—exceptions noted

California:	Optional in districts with average daily attendance under 250 pupils.
New York:	Certain rural districts not covered.
Texas:	Law is permissive; all districts have the option of coming under the tenure provisions.

In certain places only

Georgia:	DeKalb, Fulton, and Richmond Counties
Kansas:	Kansas City, Topeka, and Wichita
Nebraska:	Lincoln and Omaha
Oregon:	Districts with average daily attendance of 4,500 or more, and districts where tenure was in effect on August 24, 1965
Wisconsin:	County and city of Milwaukee

2. STATES WITH CONTINUING CONTRACT LAW OF SPRING NOTIFICATION TYPE

Less than statewide—
exceptions are tenure areas listed above

Kansas
Nebraska
Oregon
Wisconsin

3. ANNUAL OR LONG-TERM CONTRACTS

Georgia (except for three tenure areas)
Mississippi
South Carolina [c]
Utah [c]
Vermont [c]

[a] Special local tenure laws govern certain cities.
[b] Special local tenure laws govern certain counties.
[c] Statutes silent on permissible length of contract term.
[1] National Education Association, Research Division. *Teacher Tenure and Contracts,* Research Report 1971-R3. Washington, D.C.: The Association 1971. p. 7.

Tenure: The Bright Hope

Tenure laws were originally designed to insulate teachers from the twin evils characterizing much public employment practice in the late nineteenth and early twentieth centuries—bossism and the accompanying spoils system. Like early civil service reform, tenure statutes were intended to formalize the ground rules for those public servants whose positions were often endangered or demeaned by being subject to the arbitrary and selfish whims of political chiefs. "Bosses" commonly looked upon jobs as something to be awarded to the faithful—spoils of war in a continuing political skirmish, favors to be granted or withdrawn for any reason or for no reason at all.

Advocates believed that teacher tenure, a statutory guarantee of fair employment practices, would make possible the employment and retention of a cadre of professional education workers free from unwarranted personal and political pressure—free to teach without fear of job insecurity caused by arbitrary and capricious actions of employing administrators or boards of education.

Even more important to society, teacher tenure statutes would provide essential—albeit indirect—protection for learners. Tenure would protect students' freedom to learn from teachers secure enough in their own positions that they could devote their full attention to the pursuit of truth, without looking fearfully over their shoulders to see whether they were getting the daily approval of the boss and the public. Tenure would protect the right of students and teachers to pursue and examine even currently unpopular or distasteful ideas.

Thus, tenure laws, in protecting the teacher's freedom to teach and the learner's freedom to learn, also would afford the climate of academic freedom essential to a free and developing society. That was the idea, but something—a lot of things—went wrong. So wrong, in fact, that the profession's exasperated search for new alternatives to tenure was expressed directly in the 1972 AASA Resolution which gave rise to this document:

> . . . we urge the AASA to initiate a comprehensive study of existing tenure statutes and practices to the end that

imaginative and realistic alternatives can be recommended to the membership. We urge the Executive Committee to issue a status report to the membership no later than February 1973.

Tenure: The Gloomy Reality

The concept of teacher tenure today is under severe attack. There is a clearly discernible trend across the nation to abolish or at least modify tenure laws. Many argue that the conditions which originally necessitated the establishment of tenure laws no longer exist. The editors of *Education Summary* have predicted that tenure laws will shortly "go down the drain." What has happened to the bright promise of teacher tenure?

The gloomy reality is that tenure laws have operated so unsatisfactorily, often protecting weak teachers and incompetent administrators, that supporters of the concept of tenure are becoming very scarce.

Popular Disenchantment. In a recent opinion poll of administrators, conducted by Nation's Schools,[2] a large majority of the respondents—71 percent—reported increasing public dissatisfaction with teacher tenure.

TABLE II

How Administrators Voted in the NATION'S SCHOOL Poll:

1. Have you noticed increasing public dissatisfaction in your district with teacher tenure?

   23% a lot 48% a little 12% none
   17% do not have tenure

2. Do you favor teacher tenure as now set up?

   18% Yes 82% No

3. If not, do you believe tenure should be abolished or reformed?

   14% abolished 86% reformed

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[2] "Tenure Reform Can't Come Soon Enough for School Men." (Opinion Poll Survey). *Nation's Schools.* Vol. 89, No. 6, June 1972.

4. If you favor reform, what changes would you like to see?
   - 29% extension of probationary period to five or more years
   - 54% renewal of tenure perhaps every five years
   - 13% use of outside referees for contract termination hearings
   - 4% other

5. Approximately what percentage of your teachers might you consider terminating if they were not protected by tenure?

   25% less than 1% 45% 1-5% 21% 5-10%
   7% 10-15% 2% 15-20%

The public, ordinary citizens with children in school and/or paying taxes to support the school, seem generally to feel—perhaps without realizing how tenure actually operates or what degree of effective protection it really does afford—that tenure guarantees that weak teachers can continue to perform ineffectively. With incompetent teachers thus protected, the public believes (with some accuracy), ineffective or unsatisfying educational programs are almost ensured.

Evidence is mounting that the general public does believe that the schools are often either ineffective or at best unsatisfactory in providing for the learning needs of children and the educational aims of contemporary society. It is not difficult to see why the public then makes a direct connection between teacher tenure and poor education: If we could just get rid of the poor teachers protected by tenure, educational programs would improve. The negative feeling of the general public is exacerbated by their frustration over the rising costs of education.

Particularly the hard-pressed homeowner, viewing his escalating property tax and knowing both that much of it goes to support schools and that 80 percent of that portion is devoted largely to teacher salaries, vents some of his exasperation by calling for the dismissal of teachers that "everybody knows" are not getting the job done. It is especially galling that he has to pay what he considers very heavy taxes to support teachers who appear to be locked into their positions, often with built-in automatic pay raises, when there exists grave suspicion that these teachers are simply not effective.

This negative popular reaction is especially strong in a time of alleged oversupply of teachers (though it is questionable whether the current imbalance represents an oversupply of teachers or an underavailability of funds to support sufficient teaching positions). It seems to the average citizen that now is the time to get rid of the poor teachers and hire better ones from this vast reservoir of new and available graduates of up-to-date teacher education programs. But you can't do this, the citizen is likely to reflect gloomily, because you simply can't get rid of those tenured teachers!

Professional Disillusionment. It is not just the public that is raising questions about the advisability of continuing present teacher tenure practices. The *Nation's Schools* poll, as Table II (above) reveals, indicated that 82 percent of the responding administrators replied negatively to the question, "Do you favor teacher tenure as now set up?" In response to a further question, however ("If not, do you believe tenure should be abolished or reformed?"), only 14 percent of the responding administrators wanted it abolished outright.

The respondents to this inquiry were, it should be emphasized, administrators and not classroom teachers, so the results cannot be said to be fairly representative of what the education profession as a whole believes. Since administrators rarely have tenure in their administrative posts, even though they may technically retain a tenured teaching position when they accept that post, they probably view the tenure question with a much more jaundiced eye than do teachers in the classroom. No comparable data can be adduced that would suggest that the organizations representing classroom teachers, at national, state, or local levels, would respond as negatively to questions about teacher tenure as did the administrators. Yet evidence is mounting that teachers themselves do not like tenure as it now exists. Most tenured teachers probably feel that they individually deserve the protection they have; but many of them are painfully aware that any attempt to improve teaching conditions, to secure increased salaries, and often even to change educational practices is hampered or hamstrung because a hard core of incompetent or at least unmovable tenured teachers diminishes the regard in which teachers are generally held. That is, those teachers who do hide behind the

protection of tenure either to shelter their own incompetent behavior or to resist educational change are detrimental to the progress of the teaching profession and of education as a whole.

Inept Administration. It has been frequently argued that tenure protects not so much weak teachers as weak administrators. Unfortunately, this charge is far from baseless. If a demonstrably poor teacher is kept on the staff simply because of his holding a tenured position, the administrator is as much or more to blame than the teacher. It is unfortunate but true that there is a substantial number of administrators who simply do not have the professional courage, or do not want to take the trouble, or do not know how, to document charges that would lead to the justified dismissal of the poor teacher. In such cases, it is very true that tenure laws protect and preserve weak and inept administrative practices, not just weak and inept teachers.

There is another side to the coin. Very often the problem is not inept administration but rather an inadequate number of administrators to do the job. This has occurred in great part because, mistakenly, school boards and superintendents, in too many instances have negotiated away their middle management. Clearly, if both good instruction and due process are to be guaranteed then there must be a sufficient number of courageous administrators.

Encouragement of Sloppy Evaluative Practices. Weaknesses in both the concept and the application of teacher tenure laws have been made more glaring by careless or nonexistent evaluation of teacher performance. This laxity has occurred for at least two reasons. First, out of indolence, fear, or lack of imagination, we in the profession of education have failed to develop and utilize adequate measures of teacher performance based on objective statements of what is expected of the teachers. Therefore, lacking or not using these adequate measures, it has been easy to allow incompetent teachers—who, it must be emphasized, represent only a small percentage of the total teaching profession—to remain secure and undisturbed in tenured positions. In addition, many administrators have been discouraged from attempting to evaluate and apply the evaluative results to decisions about retention of teachers after the probationary

period because of a feeling of futility. Even if you had definite evidence of inadequate or even shockingly inferior performance, you just couldn't get rid of the tenured teacher anyway unless he had committed some overt act of malfeasance or immorality. So, why bother with evaluation?

Negative Reactions from Legislators. Members of state legislatures, charged quite directly under most state constitutions with general overseeing of the state educational system, are often more perceptive than we realize in reflecting public moods. The public mood of disenchantment with and even violent opposition to teacher tenure is reflected in many actions being taken or proposed at the state legislative level. For example:

The Colorado legislature has considered a bill that would deny tenure to those who had not already achieved tenured status by July 1, 1971.

Illinois has come up with the "swap" theory, which calls for the repeal of tenure laws if legislation is enacted providing for collective bargaining or professional negotiations.

Pennsylvania would also replace tenure with the grant of bargaining power—a neat *quid pro quo*.

Connecticut would substitute for tenure a 3- to 5-year basic contract, and extend the probationary period.

California would establish annual teacher evaluation programs using standard procedures (in fact, much of this idea has already been incorporated in the so-called Stull bill).

New Jersey legislative action would replace tenure with an extended contractual agreement of 3 to 5 years.

The New York legislature has instituted a 5-year probationary period within which the board has unlimited right to terminate employees without giving any reasons or affording any hearing (however it is possible that laws such as this will be declared unconstitutional since certain federal district court decisions have declared that public employees must be provided due process in termination of even probationary employment).

Even cities are getting into the act: a recent San Francisco charger amendment eliminated tenure for all administrators and provided for their reassignment as teachers with tenured status.

This attempt at corrective legislation—legislation de-

signed directly to correct abuses in present tenure laws or their administration by means of legislative fiat—has been accompanied by other more indirect attacks on the tenure problem.

Mandated statewide teacher evaluations, such as the Stull bill in California (referred to above) and recent legislation in Virginia and other states would make the retention of a teaching position or the promotion of a teacher subject to objective measurement of student progress.

Many states have proposed or are enacting legislation which withdraws or modifies significantly the statutory authority of state education agencies and/or teacher education institutions to grant the virtually permanent certification which undergirds the tenure concept. Legislators are suggesting that certification be based solely on performance by the teacher as measured either by some specified standards, or by the performance of the student, which is assumed to reflect the teacher's skill and the quality of instruction. In some proposals, certification as a more or less permanent license to teach simply will be abolished. In any case, without a certificate to teach, tenure would become a meaningless protection in job security.

Incompatibility with Contemporary Educational Concepts. The very word "tenure" is something of an anachronism in modern education, implying (as its Latin root suggests) the "holding onto" some defined object—in this case, a teaching job.

With the contemporary emphasis on change in education and society, it does not seem quite appropriate that a teacher tenaciously cling to his job—he ought to be growing, changing, developing professionally, not just hanging on for dear life. "Tenure" is not actually incompatible with inservice growth, but its emphasis is static, rather than dynamic.

The job the teacher holds, too, must change. No position stays the same while education advances, technological innovations are utilized, new instructional strategies are employed, and teaching tasks are continuously sorted out into new kinds of work assignments as differentiated staffing patterns become common educational practice.

Tenure—let's face it—just *sounds* stuffy and stultifying!

The gloomy reality about tenure today is that it has very few friends or supporters except among some teacher organizations. Admittedly, it has some allies. Courageous teachers who engage in innovative activities, but are employed by conservative districts, need and deserve reasonable protection. Nonetheless, it is being questioned throughout the land. Those both in and out of the teaching profession who raise the questions are now in such positions of strength as to make it appear extremely dubious that teacher tenure as we have known it in the past decade will continue to survive unless both the concept and the administration of tenure are sharply modified and substantially improved. Change in tenure laws seems inevitable. Again, it is important to remember that most members of the administrative team and presumably most teachers—and perhaps even many of the general public—do not want simply to *abolish* tenure. They would like to see it refashioned so that its inherent values may be preserved and its serious faults eliminated.

Sorting Out the Values: What to Keep, What to Discard?

To make a rational determination of what kinds of revolutionary or evolutionary reform would best preserve the major values of the tenure concept, while most quickly and effectively removing its serious limitations, it is essential to clarify the basic notion of tenure. Members of the teaching profession as well as the general public often have only hazy notions about what tenure is and how much "protection" it really affords.

For example, statutory tenure does not preclude the termination of a tenured employee. The term "permanent tenure"—an unfortunate one at best—should not be construed literally; it probably should not even be used, but replaced with some phrase like "appointment without specific time limitation." A tenured teacher can invariably be removed, under existing statutes, for "cause"; the problem is that the causes have been too narrowly defined, and their interpretation has often been very poorly delineated. A tenured teacher does not have either a vested right to a job

or a contract underwritten by the state; tenure statutes are simply legislative acts that reflect current legislative policy, a policy which is not binding in a contractual sense nor binding over future legislatures. In a phrase, legislatures give a policy status to tenure; they can likewise alter that policy and take tenure away. Tenure is not a fixed and immutable principle of common law.

What Should We Discard? First to be discarded should be confused perceptions of tenure as some kind of absolute guarantee affording unyielding protection to any teacher. Most states provide for the termination of tenured personnel found guilty of gross immorality, insubordination or incompetence. We should discard, therefore, the concept of an absolute statutory guarantee to the teacher's job. There is no basis for believing that anyone has an inherent "right" to hold any job whatsoever. Once we have discarded that misleading concept, we can go on with improvement of tenure statutes and their application and administration.

What Shall We Keep? The essential rationale for tenure laws, from their very earliest inception through their almost universal application in all states, was that teachers need protection from arbitrary, capricious, or malicious dismissal. *We do not want to make it easy to fire teachers.* Protection from dismissal for reasons not related to job performance is not only fair for teachers, but essential for a society that puts high priority both on democratic processes and on a free and open educational system. But protection from arbitrary dismissal is neither essential nor fair to anybody unless the teacher is doing his job effectively. Merely to protect teachers because it seems the democratic thing to do is not the real aim: the real aim is the improvement of instruction for children. If we want to keep tenure, that, above all, must be our constant purpose. Within these parameters, constructive and realistic alternatives and options, to be used singly and in combination, can be offered.

Realistic Directions: Alternatives and Combinable Options

1. *Formal, Detailed, Specific Personnel Policies*

A great many teachers who have no fear of evaluation

itself, teachers who are competent and secure in the knowledge of their own competency, are very fearful that they will be dismissed, demoted, or denied promotion for something that is not clearly explained. That is, they fear that no matter how well they teach—and they are perfectly willing to be continuously and fairly evaluated on their competency—something expected or not expected of them will be used as reason for a negative personnel action affecting them.

Therefore, it is essential as a basis of any good administrative management policy in education that the written personnel policies be as specific and clear as possible. Of course, initial development of these policies must not be undertaken as a unilateral administrative action—administratively sponsored and administratively conducted and administratively approved. Policies must be developed in collaboration between the management team and the teachers. They should be equably and appropriately applicable both to administrators and to those not holding administrative positions—that is, there should not be one set of policies for administrators and another for teachers except where these distinctions are essential to and inherent in the different job roles and position descriptions.

Even though they are collaboratively developed, such policies will of course be subject to constant revision, particularly through the process of negotiated contractual agreements—professional negotiations. But this does not excuse the administrator and his staff from the responsibility for setting up and using the machinery to get personnel policies clearly formulated in writing. If teachers—and administrators—know what is expected of them with regard to any behavior which may result in a personnel action, favorable or unfavorable, a great deal of inherent insecurity is dispelled. Personnel policies should include formal, written, board-adopted statements of the entire personnel-action sequence: initial creation and description of jobs; the recruitment and selection process, including detailed statements of what is expected and required (and agreed to) regarding teacher performance and evaluation; and clear delineation of grounds for either positive or negative personnel action—from promotion to dismissal.

The preceding sentences do not attempt to summarize

every detail of personnel administration procedure; they simply illustrate that anything that affects the individual in his work relationship with the educational institution, the school, should be spelled out in detail and adopted as formal board policy. Once these policies are formally established (even though they should be continuously negotiated and changed to keep them current), no teacher need fear that something will be done to him because of his lack of knowledge of what is expected of him. Furthermore, no teacher will have cause for insecure feelings about how decisions are made, or what happens to whom under what conditions. These are fears that are very real, and for very real reasons, to many teachers. These are fears that cause them to seek the blanket protection of statutory tenure. When the fears are allayed, tenure statutes become relatively meaningless additional protection.

2. *Position Descriptions in Broad Performance Terms*

It is a simple, but by no means simplistic, basic premise of personnel administration that if you can't describe a position, you can't evaluate its performance. Writing precise descriptions of teaching and other educational positions in performance terms seems to be a lost—or at best a neglected—art. We are likely to settle for a brief paragraph—or even a phrase that says that the teacher is expected to teach the sixth grade, or to teach social studies, or to instruct in industrial arts. With no more description than that—with no clear indication of what specific performance is expected, what level of performance is considered satisfactory, and on what bases and by whom the evaluation of that level of performance will be made—it becomes virtually impossible to say whether the teacher is doing a good job.

It is not suggested that each position description has to be in fully technical "behavioral objective" terminology. That is why the heading of this section calls for position descriptions in broad performance terms. It is essential, however, that the holder of the position know what he is expected to do, how well he is expected to do it, and how he will be judged on his accomplishments. Those essentials cannot be overlooked or ignored.

This does not mean that some administrator or group of administrators will actually write each position description. Preferably, position descriptions should be developed by a joint committee of teachers and administrative personnel at the building level, on-site where the job is actually being done. They will have to be refined and ratified at central office level. Finally, they should be officially adopted by the school board as a matter of board policy, but they should originate with those who are actually charged with getting the instructional job done.

Once such position descriptions are available, meaningful evaluation can proceed.

3. *Evaluation Procedures Keyed to Performance Expectancies*

Most professionally mature and sensitive teachers do not really want a guarantee of employment regardless of performance. They simply want an assurance that the position they hold will not suddenly be taken away or downgraded—nor will their opportunities for professional and salary advancement be denied or diminished—because they do something their administrative superior considers wrong or they fail to live up to some performance standard that has not been explained and accepted. If, however, the performance expectancies have been set forth in a clear position description, the teacher can expect to be evaluated according to these performance standards.

Teachers generally do not fear evaluation itself; what they fear, and quite legitimately, is that the evaluation will not be fair or appropriate. Once a *basis* for evaluation is established in the performance expectancies set forth, their fear or insecurity will be allayed by clarification of the *procedures* for evaluation. Although this brief document is not intended as a full treatise on teacher evaluation, certain commonly accepted principles of evaluation can appropriately be set forth here.

First of all, any evaluation of performance (whether that of teacher or administrator) should be based on mutually understood and accepted and objectively observable standards of behavior. The recognition of this point has been given

wide publicity by AASA in the model contract which it has developed for use between school boards and superintendents.

The observed behavior of the teacher can be measured both directly—in terms of his own performance—and indirectly—in terms of student performance. But since student performance, particularly, is itself multifaceted, no attempt should be made to shortcut its measurement by the use of simplistic standardized measures of academic achievement limited to the cognitive domain. An attempt to measure whether a teacher is competent simply by the scores of students on standardized tests is obviously inadequate. Such scores may be used as part of the measure of teacher effectiveness, but only when specific conditions have been noted and taken into account. Measurement of teacher behavior is always situational and conditional—it depends on what type of school and what abilities of students are involved.

Teacher evaluation should be on a scheduled and continual basis, not engaged in haphazardly through casual drop-in visits by the supervisor or off-the-cuff conversations in the hall.

Evaluation should suggest specific improvements needed and ways to accomplish them. Scaled judgments of performance without suggestions for needed improvements and for means of accomplishing them do not constitute a system that is calculated actually to improve instruction. An evaluation of teacher performance used solely to judge whether a certain personnel action should be taken does not contribute substantially to improving the educational process.

If improvements in teaching performance are needed (as they almost always will be), a good evaluative system sets forth a time schedule that will allow these improvements to be made before negative judgments of a final nature are entered into the teacher's record. Time to improve, as well as knowledge of what improvements are needed, is an essential part of equitable and useful evaluation.

The judgments must be made by more than one person. Ideally, although such judgments must finally be reviewed by some single administrator, the data on which the final review is made should be drawn from the combined input of both peers and superiors. Some teachers will resent having their peers sit in on judgment of their performance, or

will be reluctant about undertaking this responsibility themselves. But if the elements of protection afforded by tenure are to be preserved, even though formal tenure laws may indeed be on the way out, this is a professional and personal sacrifice that teachers will probably be willing to make. Peers, of course, should evaluate only in areas where they have first-hand information.

Finally, in a fair evaluative procedure, no extraneous demands should be summarily imposed. What has been decided upon at any stage in the development of evaluative procedures should not be overruled by some sudden administrative decision that another condition should be imposed. Only those items and elements which contribute directly to the instructional effectiveness of the teacher should be part of the evaluative judgment. It is possible, of course, that a negotiated agreement could bring into play other factors of personal behavior or community performance or acceptable professional activity—but none of these should be suddenly thrown at the teacher as an element of failure in his performance unless they have been clearly specified in advance as part of the evaluative process.

We are not yet skillful enough in applying the processes of teacher evaluation to make the assumption that any system now known will work perfectly. There will be mistakes and misunderstandings and maladministration. But there are now available—if we will use them wisely—avenues through the processes of professional negotiation and simple consultation that will maintain opportunities to rectify the errors and make positive improvement in the evaluative procedure through periodic renegotiation and refinement.

Obviously, evaluation of the kind envisioned in the preceding paragraphs is not something that can be done by an overworked principal or a harried vice-principal or a departmental chairman with only a modicum of released time for such activities. Although the evaluation will involve cooperative work between members of the administrative team and teachers in the building, the net result will be to place more burden on the administrators especially. This means that if we use evaluations based on performance competencies clearly set forth in good job descriptions, we are not going to simplify and streamline the administrative process or

reduce the number of administrators needed. *Good use of teacher evaluation will require more, not fewer, administrators.* It will move much of the decision making to the building level, away from the central office; it will take more time and personnel; but it will result in direct monetary savings if we can free ourselves of the burden of the incompetent teacher and improve the general level of instructional performance.

4. *Renewable Contracts Keyed to Fair Evaluation*

Statutory tenure, which has become for most teachers merely an assurance of reasonable job security, would lose much of its desirability in their eyes if renewable contracts were made an essential part of employment conditions. Performance evaluations as described above could be used as a basis for renewing the contracts on an annual basis (or one or two years in advance, possibly even three). In that case, most teachers might not even really want the automatic and statutory guarantee that the job would be there as long as need for the job existed and fiscal resources were available. Again, the type of model contract that AASA has proposed for delineating the employment relationship between superintendents and their boards could serve as a useful basis for the development of a similar model for teacher contracts.

When we speak of a model, this does not suggest that there be one standard, fixed contract for all teachers everywhere. Models serve only as substantive generalizations of what might ideally be accomplished. The actual form and format, the actual details of the contract, even the wording and timing, are items most appropriately determined at the local district level. To develop a model contract is not to impose an authoritarian or monolithic system of teacher employment practices.

5. *Impeccable Due Process*

A system of position descriptions developed under good written personnel policies and evaluated according to performance expectancies clearly set forth cannot guarantee fair treatment of teachers unless the means by which these administrative procedures are used are carefully designed and managed to see that proper procedures are followed

to ensure fairness. Due process has long been a fundamental principle of English common law and basic to the legal procedures in and under American democracy, but we in education sometimes react as though it had just been discovered and imposed on the educational establishment. Actually, due process has always been required in theory, but it has taken some rather severe jolts from court decisions to make us realize that due process is not something that is applicable everywhere except in school. Court decisions involving both student and teacher rights have simply reaffirmed and reinforced what has always been true: that any individual threatened with a substantive penalty or punishment must be afforded due process.

It is possible to describe due process in extremely detailed and complex ways; in light of the enormous complexity of some of the legal principles and judicial interpretations in current case law, it is tempting to include as many details as possible. For our purposes here, however, we may use a very simple description of the elements of due process which are absolutely essential to fair teacher personnel practices.

The elements are these: a) specific written charges capable of verification must be presented; b) there must be a hearing with counsel if desired; c) there must be assurance that no new charges will be introduced at the hearing; d) there must be provision for appeal.

A good many other precautions that are calculated to afford a more complete application of due process should perhaps be noted. Many of them, however, depend a great deal on the circumstances of a given instance. It is not reasonable, for example, to specify that all hearings should be conducted under full court-type conditions (although total transcripts taken and available to both sides of the dispute often are valuable); that everyone contributing to the substance of the hearing must be treated as a witness to be challenged and cross-examined; and so forth. Perhaps the easiest way to get around the problem of how much detail there should be in a description or application of due process is to suggest that procedural due process essentially requires the elements set forth above; substantive due process means essentially that the substance of what is done is itself reasonable, rational, and fair. For example, procedural due process

might not technically require giving a teacher whose professional status is threatened by an action the time and chance to make improvements before the action is taken; it is, however, certainly a part of *substantive* due process to afford the teacher this opportunity. Moreover, if what we are really interested in is not hanging something on the teacher but improving instruction, it simply makes good sense to give the teacher a chance to know what is expected of him or her and how those expectations have not been met and to give further opportunity for the necessary improvements to be made.

It is quite possible that teachers have clung tenaciously to the concept of tenure, even with all of its limitations, more because they were afraid of not being accorded due process than for any other reason. It is true that due process in education is a relatively new concept, that we had implicitly assumed that both teachers and students could be treated rather cavalierly as long as such treatment met administrative needs or even administrative whims. There is good reason to believe, however, that had there been a well-established policy and procedure for use of due process half a century ago, the need for tenure laws would never have emerged.

Due process, it must be reiterated, follows certain legal precepts and embraces certain legal safeguards, but essentially it is a humanistic commitment rather than an adherence to legalistic principles. Once we in education are committed to the concept of due process, it becomes imperative that it be applied at all times, to all persons who might be affected adversely by administrative decisions. When we recognize this necessity, the old distinction between probationary and nonprobationary teachers is likely to disappear—no one should be treated cavalierly or unfairly just because he is new to the game. Any proposal that tenure be replaced by longer probationary periods then seems merely a self-serving suggestion on the part of administrators who want more time to dismiss a teacher without giving any good reasons or having to explain anything to anybody. If we accept totally the concept of due process, then even new teachers should be afforded the same guarantees of fair and responsible treatment as those who have completed the statutory probationary period.

6. *Incorporation of Administrative Procedures in Negotiated Agreements*

Professional negotiations have opened up channels of communications. They have provided a forum for more candid discussion of problems between teachers, administrators, and employing boards, moving the decision-making process more nearly down to the areas where the action is—the classroom. They have thus given those affected by decisions more of a voice in making them, yet it is quite generally agreed that the whole movement so far has been disappointing educationally. Professional negotiations, unfortunately, have not yet done very much to improve instruction and learning.

Perhaps there is a good chance now that professional negotiations can be very directly applied to the problems of evaluation of teachers in terms of specific expected performance. It is possible for these expectations to be translated and incorporated into negotiated contracts which will serve far better to protect the teacher interest, the public interest, and the interests of the educational program than has reliance on the protection thought to be afforded by statutory tenure.

This will happen, however, only if negotiation is conducted on a *quid pro quo* basis. If negotiation is to have real meaning, it must be a give-and-take process. Teachers will have to give up certain protections they have assumed were inevitably theirs, and administrators and boards will have to give up certain prerogatives that they have assumed were likewise inevitable and unarguable.

Even more simply stated, if we are to find something better than tenure to protect the interests of all of the concerned parties, we are going to have to offer assurances to teachers that they will have a significant voice in determining the conditions of their employment, including the ground rules and procedures for taking all personnel actions that affect them. By the same token, if the teachers are going to have this kind of opportunity and protection, they must assume their responsibilities for entering fully into the process of defining and describing performance expected and participating in the fair evaluation of that performance.

In brief, the protection of the employment rights of

teachers and the protection of the right of the public to have ineffective teachers removed through due process ought to be attained through negotiated agreements translated into employment contracts, rather than provided by legislative statutes which confer tenure. Nevertheless, appropriate legislation is still needed—legislation which will enable the conduct of effective professional negotiations. States which have no negotiation legislation or only piecemeal or ineffective legislation covering the complicated negotiations process would be well advised to make the legislative enabling provisions necessary for the kind of negotiations that could help replace antiquated and obsolescent tenure laws.

THIS OR THIS	
Present Realities	**Creative Alternative**
✓ Inflexible tenure laws	✓ Written personnel policies
✓ "Client" discontent	✓ Position descriptions
✓ Professional disillusionment	✓ Performance expectancy
✓ Inept Administration	✓ Renewable contracts
✓ Incompatibility with contemporary educational concepts	✓ Impeccable due process
	✓ Negotiated agreements

Summary

The concept of "tenure," with all of its clumsy and confusing burden of historic and current misinterpretation, with all of its flagrant misuse to protect the guilty and ineffective along with the teacher needing protection, with all of its frightful maladministration which satisfies nobody—tenure as we have known it will probably disappear before long. The forces opposed to teacher tenure as a statutory basis for teacher employment are doubtless too strong to be denied.

But what tenure laws intended—and have failed—to do will almost surely, if we will it and plan for it, be preserved in other forms of administrative procedure. Clear and detailed administrative procedures

—set forth in written personnel policies,

—validated by sound administrative and evaluative practices,

—ratified in negotiated agreements,

—fully consistent with just constitutional requirements

will continue to afford needed protection for teachers and administrators, for learners, and for the public interest.

This can happen only if it is made to happen. The search for imaginative and realistic alternatives to statutory teacher tenure is not one which can be entered into lightly or conducted half-heartedly. It is a real search, a quest that will involve long and detailed planning, intensive preparation, marked alteration of slipshod administrative practices, and a real commitment on the part of teachers, of administrators, of the public, and of legislative bodies to make it a productive enterprise.

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